



## Report to the Auburn City Council

Action Item  
Agenda Item No.

8

City Manager Approval

**To:** Mayor and City Council Members  
**From:** Michael G. Colantuono, City Attorney  
**Date:** July 27, 2009  
**Subject:** Acceptance of Quitclaim Deed re Alley Off of Knoll Street

### The Issue

Should the City Council ratify the Acting City Manager's acceptance of a quitclaim deed transferring to the City any claim the heirs of the original subdivider of the College Heights Extension subdivision might have to the alley in issue in *Fisher v. City of Auburn*?

### Conclusions and Recommendation

The City Attorney recommends that the City Council, **by MOTION**, ratify the Acting City Manager's acceptance of the quitclaim deed as a courtesy to the heirs of the original subdivider so they need not be involved in the *Fisher* lawsuit and to reduce the cost of defending that suit by eliminating unnecessary parties.

### Fiscal Implications

The staff resources to prepare this item for your review and to execute the quitclaim deed are budgeted. Ratifying acceptance of the deed will allow dismissal of the subdivider's heirs from the suit, simplifying the matter and reducing the City's cost to defend it.

### Alternatives

The Council could refuse to ratify the acceptance of the quitclaim, which would likely invalidate it, and require the heirs of the subdivider to participate in the *Fisher* case or to allow the plaintiffs to take their default judgment. The City's position is that the heirs have no claim to the alley and the quitclaim does not change the fact that the City owns and controls the alley, so elimination of their claims by litigation rather than via a quitclaim to the City would have much the same effect. Ratifying acceptance of the quitclaim should reduce litigation costs, however.

**Discussion**

As the Council knows, an alley runs north of Knoll Street and serves 8 or 9 parcels in the College Heights Extension subdivision of the City. Although all parcels receive refuse collection, police, fire and other public services via the alley, only the Fishers' apartment house uses the alley for vehicle access. Because the alley is narrow and others do not use it for vehicular access, the Fishers have a number of complaints about trash cans and trash left in the alley, parking of cars that block the alley, and other nuisance behaviors. The City has offered to address these nuisance behaviors when they occur and has invited the Fishers to bring these problems to the City's attention so it can do so. The Fishers believe, mistakenly in the City's view, that they can obtain ownership of the alley by suing the City and their neighbors, and thus control use of the alley to the exclusion of their neighbors to eliminate the behaviors that annoy them.

The City believes this lawsuit is unfounded – a prescriptive title (gained by exclusive, unpermitted use of property in an open way for 5 years or more) cannot be had against a public agency because it is not possible to show that use of a public alley was either exclusive or “unpermitted.” In addition, although the City Council rejected an offer of dedication of the alley in 1912, the law is clear that such actions are not sufficient to prevent public title from arising in an alley – if an offer to dedicate a right of way to a public agency does not expire (as offers as old as this do not), it can be eliminated only if the agency accepts title to the street and then formally vacates it after notice to the affected property owners. Thus, the original offer of dedication was available for acceptance and could be accepted by (i) formal action by the City Council (which does not appear to have occurred), (ii) by use of the way by the general public for more than five years, in which case the City can assert control and ownership over the alley on behalf of the public, or (iii) implied City acceptance by use and control of the alley. As the alley overlies a City sewer line, the City placed “Fire Lane – No Parking” signs in the alley, and provides police, fire and other public services (including the services of its franchised trash hauler) via the alley and has done some for many years, the City's legal title to the alley seems plain under the latter two theories.

The original subdivider of the neighborhood cannot have any interest in the alley for the reasons stated above. However, the Fishers' attorney demanded a quitclaim from the heirs and added them to this lawsuit when they refused. Desiring to avoid the cost of defending the suit without agreeing to the Fishers' attorney's demand, the heirs offered to grant the quitclaim to the City, instead, which should allow the City to obtain their dismissal from the case (either with the Fishers' consent or via a Court order) or at least mean that their default (should they allow that to occur) will have even less meaning that would otherwise be the case.

As a courtesy to the heirs, who now live in Southern California, City staff agreed to accept and record the quitclaim deed. As action on title documents normally requires Council action, we present the acceptance of the quitclaim deed to your Council for ratification. We did not await your action before recording the quitclaim in order to expedite our efforts to remove the heirs from the case.

**Conclusion**

If I can provide further advice or assistance on this subject, please let me know. I will, of course, be available at the July 27<sup>th</sup> Council meeting to discuss this if necessary.

c:     Bob Richardson, City Manager  
       Any Heath, Director of Administrative Services  
       Jack Warren, Public Works Director  
       Bernie Schroeder, Engineering Division Manager

RECORDING REQUESTED )  
BY AND )  
WHEN RECORDED RETURN )  
TO: )

07/17/2009, 20090062779

City of Auburn )  
c/o Michael G. Colantuono )  
City Attorney, City of Auburn )  
11406 Pleasant Valley Road )  
Penn Valley, CA 95946-9024 )  
Telephone: (530) 432-7359 )  
Facsimile: (530) 432-7356 )

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

### QUITCLAIM DEED

For a valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Jon Archie Goldsberry, Diane Mann and Elizabeth Lautt (collectively, "Grantor"), does hereby remise, release and forever quitclaim to the CITY OF AUBURN, CALIFORNIA, a municipal corporation ("Grantee"), its successors and assigns, any and all right, title and interest in and to the real property legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), including without limitation all easements and improvements therein.

(signatures follow)

Grantor

Jon Archie Goldsberry  
Jon Archie Goldsberry

### NOTARY ACKNOWLEDGEMENT

State of California

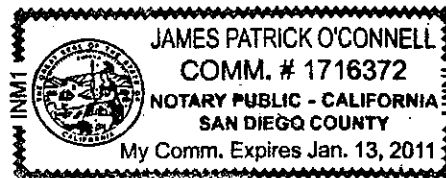
County of San Diego

On July 8<sup>TH</sup>, 2009 before me, James Patrick O'Connell, <sup>Notary Public</sup>, personally appeared Jon Archie Goldsberry, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature James Patrick O'Connell (Seal)



Grantor

Diane Mann  
Diane Mann

NOTARY ACKNOWLEDGEMENT

State of Washington

County of KITSAP

On JULY 8 2009 before me, DORA L FLORES, personally appeared DIANE / MANN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WASHINGTON  
DE

WITNESS my hand and official seal.

Signature Dora Flores (Seal)



Grantor

Elizabeth A. Lautt  
Elizabeth Lautt

**NOTARY ACKNOWLEDGEMENT**

State of Washington

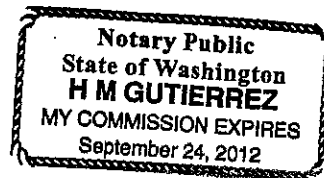
County of Kitsap

On July 8, 2009 before me, U.M. Gutierrez, personally appeared Elizabeth A. Lautt, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elizabeth A. Lautt (Seal) U.M. Gutierrez



## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE PROPERTY

The alleyway that runs northwesterly from Knoll Street and parallel to Pleasant Avenue and College Way in the College Heights Extension Subdivision located in the City of Auburn, as shown on the College Heights Extension Subdivision filed in Book C of Subdivisions at Page 63, Placer County Official Records.